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ZONING BOARD OF APPEALS

TOWN HOUSE  
ANNEX  
337 ROUTE 202  
SOMERS, NY 10589

*Town of Somers*

WESTCHESTER COUNTY, N.Y.



**Meeting Minutes**  
November 20, 2018

The members present were: Chairman Cannistra, Ms. D'Ippolito, Mr. Guyot, Mr. Harden, Mr. Newman and Mr. Santaroni.

Mr. Carpaneto was absent.

Building Inspector Tom Tooma and interested residents were also present.

Chairman Cannistra opened the meeting at 7:30 p.m. with the Pledge of Allegiance.

**APPLICANTS**

Chairman Cannistra announced that the application for Carol Miller, item number 2 on the agenda has been adjourned until the December 18, 2018 meeting at the request of the applicant. He asked that Mrs. Schirmer research whether or not any Special Exception Use Permits were issued for accessory apartments in an R-10 Residential District.

**URSTADT BIDDLE PROPERTIES, INC. – BZ25/18 – 17.15-1-13**

An application for an Area Variance for more than the number of pole signs allowed, located in a Neighborhood Shopping District at 325 Route 100, Somers. The property is shown on the Town Tax Map as Section: 17.15, Block: 1, Lot: 13. RE: Section Schedule 170-126.

Andy Albrecht, Vice President, as well as Director of Management and Construction for Urstadt Biddle Properties, Inc. addressed the Board. They have suffered from random and different signage through the years and have been meeting with the Architectural Review Board since last June in an effort to come up with a reasonable solution. Since his employ of almost 20 years, the building has never been fully occupied because tenants claim their clients can't locate them once in the shopping center. The building

will be painted, shutters replaced and new awnings installed. The area will be re-landscaped as well.

Four signs are being proposed. A wall sign for the building and three free standing pole signs. As per the original site plan for this building, only the new wall sign is permitted. All of the existing tenant signage will be removed, including the two existing directory wall signs. The "Town Center Professional Building" sign over the 1<sup>st</sup> floor main entrance will remain.

All three pole signs will have the names of the six tenants in black letters with the same font on white Lexan panels. The frame of each is black and all three will be internally lit. With regard to illumination, at night the white letters appear black and the black letters appear white giving it a very subtle appearance. On top of each, is a silhouette of three elephants. The sign proposed for the back of the building will have directional arrows for the 1<sup>st</sup> and 2<sup>nd</sup> floors.

A memo in support of the application was received by the Architectural Review Board. Although they did not object to the design and colors of the three free standing pole signs proposed, they couldn't be approved as the applicant is requesting more signs than are allowable as per the Code.

Some members felt that all three signs were not necessary. Mr. Albrecht responded that careful thought went into not only the number of signs needed, but their placement. Without them, it is very possible that someone looking for a client in that building would end up exiting the property without locating them.

Chairman Cannistra would like to see a site plan with the exact location of each sign noted; building elevations; pictures of what the signs would look like lit at night; a photo of the proposed wall sign; and the opportunity for all members to visit the site before the December meeting.

Mahopac resident Linda Calamari addressed the Board. She doesn't see the need for all those signs.

The application is adjourned until the December meeting. Mr. Albrecht was reminded to give all submissions to Mrs. Schirmer no later than December 7<sup>th</sup>.

### **PAUL AND ANGELA TEDESCO – BZ27/18 – 15.07-1-1.1**

An application for an Area Variance on the height of a portion of a property line fence, located in an R-80 Residential District at 10 Windsor Road, Yorktown Heights. The property is shown on the Town Tax Map as Section: 15.07, Block: 1, Lot: 1.1. RE: Section Schedule 170-49.

Mr. Tedesco addressed the Board. He owns a little over 2 acres and the back of his property faces Route 6. Recent storms have downed many trees resulting in additional noise and annoyance from lights. He would like to replace his existing fence along the

back of his property with a white vinyl fence, however at certain areas the 6' maximum height will have to be increased. There are residential homes on either side of his lot. The neighbor to the east has a fence, but their elevation is different than behind his house. A conservation easement between Mr. Tedesco's property and Route 6 exists.

Mr. Guyot made a motion for a Type II action. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

Ms. D'Ippolito made a motion to grant the height variance. Mr. Santaroni seconded the motion.

A vote was then taken by the Board as follows...

**POLL OF THE BOARD**

Ms. D'Ippolito	Aye
Mr. Guyot	Aye
Mr. Harden	Aye
Mr. Newman	Aye
Mr. Santaroni	Aye
Chairman Cannistra	Aye

The Area Variance was approved.

**KAELA CHOQUETTE AND DAVID POTTER – BZ24/18 – 28.06-1-5 (CARRYOVER)**

An application for a Special Exception Use Permit to construct an accessory apartment on the 2<sup>nd</sup> floor of a barn, as well as an Area Variance because the barn is being constructed after April 1, 1992, located in an R-80 Residential District at 6 Annarock Drive, Somers. The property is shown on the Town Tax Map as Section: 28.06, Block: 1, Lot: 5. RE: Section Schedule 170-70.

Last month, the new owner of 6 Annarock Drive Kaela Choquette, a veterinary physician who travels to people's homes and barns addressed the Board. She requested permission to put an accessory apartment on the 2<sup>nd</sup> floor of a barn that is yet to be built. She owns four retired horses. Her mother will live in the apartment and her grandfather, also the co-owner of the property will live in the main house. Westchester

County Board of Health approval has been issued for the accessory apartment. The property is just under 9 acres and the barn cannot be seen from the road. Ms. Choquette is willing to agree to a condition of only family members and workers living in the accessory apartment, as well as not accepting rent. She reminded the Board that there is currently an accessory apartment on Annarock Drive. She will not be running a business from the property and the only visible change will be the fenced in front yard. There will not be a riding ring. Ms. Choquette and Mr. Potter bought the property to be there forever home and did a substantial amount of research with the Town before purchasing it. They were always up front about their plans. The house had been abandoned for 13 years and broken in to.

After a very lengthy discussion among all in attendance a motion was made to close the public hearing on this application.

In addition to the aforementioned application, this evening a new application was brought to the Board.

**KAELA CHOQUETTE AND DAVID POTTER – BZ28/18 – 28.06-1-5**

An application for a Special Exception Use Permit to allow for four additional horses above the two that are permitted for a total of six, located in an R-80 Residential District at 6 Annarock Drive, Somers. The property is shown on the Town Tax Map as Section: 28.06, Block: 1, Lot: 5. RE: Section Schedule 170-69-A.

Attorney Don Rossi addressed the Board. He was just recently retained by the owners of the property and didn't have the opportunity to submit any information within the 10 day prior to the meeting requirement. Ms. Choquette and Mr. Potter own 6 Annarock Drive which is just under 9 acres, as well as 8 Annarock Drive which is almost 4 acres. The code could then allow for up to 11 horses on the property, which would allow them to be well removed from the road and other residents. The horses will be used solely for the occupants of the property and will have no impact on the neighborhood. Mr. Rossi encourages the Zoning Board members to put stipulations as they see necessary on any approvals.

Chairman Cannistra announced that all members of the Zoning Board conducted a site visit since the last meeting and not only walked the property, but toured the inside the house.

Mr. Rossi addressed some of the concerns that were made at the October 16<sup>th</sup> meeting. With regard to "No building used for human habitation shall be used to house domestic animals", he feels that this section of the code is not only antiquated, but inconsistent with farm practices everywhere and needs to be amended. If interpreted literally as written, no one in the Town of Somers could have dogs or cats in their homes.

Since the current application is for 6 Annarock Drive and the applicant would like to put horses on 8 Annarock Drive, a new application has to be submitted listing both properties.

Dominic Veltri of 3 Annarock Drive addressed the Board. This is the 3<sup>rd</sup> meeting regarding this property. He has heard the application being referred to as a business, a farm and a residence. Which is it? The Code does talk about domestic animals. Mr. Veltri implores the Board to read the Code, understand it and come prepared to deliberate at the next meeting.

Donna O'Connell of 5 Annarock Drive addressed the Board. She has lived in her house for 26 years and has been a full-time realtor for 22 years. In her opinion, there is not enough usable property for all the horses being proposed. They will be in the front yard which is across from her driveway, resulting in flies, dust, rats, mice, and manure odors, all of which in her opinion will devalue her property, as well as change the character of the neighborhood.

Joan States of Sherman, Connecticut addressed the Board. She is currently housing Ms. Choquette's four horses as well as two of her own on her property which is 5 acres and runs right along a main road. With regard to some of the concerns raised, the manure is managed and turned into mulch. When properties are well managed there are no concerns with manure. Extra stalls in a barn are important, especially when the weather is inclement and the stalls have to be cleaned. They also allow for an opportunity to move the horses around within the barn when they can't be outside due to weather. Ms. States went on to say that prior to living in Connecticut, she had horses on her property in Kentucky and Texas, totaling 50 years. She always only heard kind words from her neighbors about her horses and is very sad to hear the comments being shared this evening.

Patricia Humphreys of 4 Annarock Drive addressed the Board. She asked if the public present at the meeting next month will be able to speak and the response was yes.

Town Attorney Gerry Reilly stated that he thought the public hearing on the application for a Special Exception Use Permit to construct an accessory apartment on the 2<sup>nd</sup> floor of a barn, as well as an Area Variance because the barn is being constructed after April 1, 1992 was closed. Chairman Cannistra indicated that by default it will be re-opened.

The application is adjourned until the December meeting. Mr. Rossi was reminded that all submissions have to be given to Mrs. Schirmer no later than November 30<sup>th</sup>.

**ANTHONY AND CATHERINE PORCO – BZ01/18 – 4.18-1-1 (CARRYOVER)**

An application for an interpretation under the Town Code of the Town of Somers pertaining to a nonconforming commercial use in a single family, residential district, located in an R-80 Residential District at 1 Route 6, Yorktown Heights. The property is shown on the Town Tax Map as Section: 4.18, Block: 1, Lot: 1. RE: Section Schedule 170-112.

Attorney Michael Caruso addressed the Board. He reviewed previously submitted materials with regard to the jurisdiction issue and violations existing. As part of the

presentation he reviewed the history of the property including what was on Town record, which in his opinion establishes a pattern by both the Planning and Zoning Boards of non-compliance activities of the code. The Settlement Agreement of March 7, 2014 between the owner of the property and the Town of Somers attempts to fashion a site plan, however, none of the neighboring properties were made aware of the conditions. Mr. Caruso shared aerial photos of the property from 2007, 2009, 2014, 2015 and 2016, clearly showing the increase of activity on the property over time.

Anthony Porco addressed the Board. He shared a video of jackhammering so the Board could hear the noise and see the stone dust accumulating in his yard. The noise makes his house and furniture vibrate, the dust is going into his HVAC system and he is extremely concerned over what they are breathing in. He doesn't understand why site plan or environmental reviews weren't done. In his opinion the activities need to be regulated or stopped.

Attorney Steven Wrabel addressed the Board. Under New York State law the Zoning Board has limited jurisdiction and is only allowed to address issues raised in an appeal. In his opinion there are no violations and nothing to appeal. It was clearly stated by the former Building Inspector that there has been an increase in production on the property, not a change in use. Mr. Wrabel reviewed the timeline of the business since its inception in 1957. Processing has always taken place and is an integral part of a landscape supply business. The only change has been starting in 1990 the use of modern equipment to crush rock rather than doing it by hand. The applicant's home was built in 2008 and everyone was aware of the business being conducted. Some even purchased their home at a discount because their property abutted this business. The applicant's home was one of them.

Mr. Caruso stated that accession is considered abandonment causing one to lose right of the non-conforming use.

Mr. Wrabel responded that there is no abandonment of use on record. According to the Town Code, abandonment must take place for 12 months or more, which is not the same as infrequent use. In addition, case law supports that processing is required in this type of business and an increase in production is not considered expansion. This is nothing more than a legal non-conforming use that modernized. Mr. Wrabel added that the Department of Health performs environmental oversight. He went on to say that in his opinion the video shared by Mr. Porco should be litigated in the suit before the Supreme Court. With regard to the Settlement Agreement, jackhammering has been done in the past and is not a new use. Mr. Caruso reminded the Board that the Building Inspector has the discretion to conduct a site visit and determine if there is a violation. Mr. Wrabel responded by that the Building Inspector should only be addressing issues that are part of the appeal. Mr. Caruso went on to say that although the Department of Health performs environmental oversight, it is not the same as going through the site plan and environmental review processes. Mr. Wrabel responded that the environmental review would have been undertaken by the Town when the abutting housing development was built.

Mr. Guyot asked owner of Whispering Pine Landscape Supply Tom Kuck if he could explain what tub grinding is. Branches and logs are separated, then individually get hammered, and after it sets it is mulch.

Mr. Porco addressed the Board and stated that Mr. Kuck neglected to mention tree stumps which make a horrific noise and the particulates land in his yard.

Mrs. Calamari of Cary Street in Mahopac addressed the Board. She has lived adjacent to Whispering Pine Landscape Supply since 1974. Prior to the last 6 years there was never a problem, now she is awakened by noise, the piles are building up and they smell, which she believes is an environmental issue. Although she doesn't understand what they do as part of their business, she just wants to live her life. Neighbors are supposed to help each other.

Patricia Hirsch of 2463 Evergreen Street, Yorktown Heights addressed the Board. In her opinion this is all about caveat emptor...let the buyer beware. What is happening now on the property was going on when all of those concerned bought their houses.

Mr. Porco addressed the Board. He has been complaining about this situation for 2 years and no one listened. Finally, with the help of former Supervisor Mary Beth Murphy the Building Inspector conducted a site visit and issued two violations resulting in the Settlement Agreement. Current Supervisor Rick Morrissey asked that they move the machinery to the back of the piles. In closing Mr. Porco addressed the Board explaining what transpired in a conversation between he and Gerry Reilly.

Lana Magro of 22 Rosemary Court addressed the Board. She read aloud a letter outlining her concerns, a copy of which was submitted to the members, as well as the Board Secretary.

Joe Lucia of 21 Rosemary Court addressed the Board. His main concern is health issues that can be caused from what is going on at the site and he was very upset to hear that there is pending paperwork from the Department of Health.

A resident of Cary Street in Mahopac addressed the Board. What has been going on at the site since 2000 is not what was happening when she moved into her house. There is dust, dirt, and odors. In addition, her husband has had numerous upper respiratory problems.

Amy Sage of Mahopac addressed the Board. She is concerned that folks weren't notified of the Settlement Agreement and meetings. Mr. Reilly explained that no one was notified of the Settlement Agreement and Public Notices are not sent to residents outside of Somers unless it is a Use Variance. With regard to the site, she said the berms are high, there is mulch, dirt, and stone dust, which can lead to lung problems and cancer. Ms. Sage spoke to employees of the nursery who said operations have

definitely changed. She was told by the Westchester County Department of Health that they don't have a long-term permit, only a short term one for rock crushing.

Ms. Hirsch of 2463 Evergreen Street, Yorktown Heights addressed the Board. Mr. Kuck is not sick and she is quite sure that he would not do anything at the site to get his employees sick.

Vito Andriano of 18 Dr. Tony's Road addressed the Board. He has worked with Whispering Pine Landscape Supply for many years. They donated \$15,000 to \$20,000 worth of materials for the batting cages in Reis Park. Mr. Kuck is a decent, conscientious person and he hopes for a peaceful resolve.

Mr. Porco addressed the Board. He is not saying that Mr. Kuck is not a nice guy, but there is a major problem that has to be resolved.

Catherine Porco addressed the Board. They moved into their home 6 years ago and it has been a nightmare. There is no way what is happening at the site now was going on when they moved there. Her and her family don't want to be home as there is no quiet enjoyment. Mrs. Porco is concerned about their health and she needs to know that the Zoning Board cares about what is happening to them. The value of their homes is dramatically going down. She welcomes a visit to her home by the Zoning Board.

A resident of Putnam Valley addressed the Board. For the last 10 years they have been running a full-fledged transfer station and they are not just selling what they produce. This business shouldn't be in a residential area.

David Kuck addressed the Board. They built a berm in an effort to be good neighbors, and they are not processing blacktop. Reality is that the development never should have been built.

Jim Flaherty of 48 Boniello Drive in Mahopac addressed the Board. So many false statements have been told this evening. The piles have gotten larger and there are excavators on top of them. The noise is unbelievable. When he moved there in 1979 there was no noise. The stone dust is everywhere. There are no more animals in the woods. He is just looking out huge mounds and can see clouds of dust coming down the road. The entire situation is unbearable.

Mr. Curcio addressed the Board. He is a supporter of the business. If they weren't tub grinding and taking in yard waste, everyone's taxes would increase.

Mrs. Calamari addressed the Board. She thinks there is a park across the street from the housing development, why can't they move their operations there.

Mr. Porco said the berms are 10 to 15' high. He wonders if the constant vibrating is compromising his house.



A resident of Cary Street in Mahopac addressed the Board. They start working at 7:00 a.m. seven days a week.

Chairman Cannistra would like the Board members to visit the site before the December meeting.

Mr. Porco addressed the Board. They won't hear or see anything now because the processing has stopped. Chairman Cannistra responded that it is at least a starting point for the Board.

A motion was made by Ms. D'Ippolito to close the public hearing and seconded by Mr. Santaroni. All were in favor.

At the next meeting the Board will adjourn into Executive Discussion with the Town Attorney.

The application will be carried over to the December 18<sup>th</sup> meeting.

**OTHER BUSINESS:**

A motion was made by the Chairman to approve the minutes of the October 16, 2018 meeting. All were in favor.

Happy Thanksgiving wishes were extended to all. The Town Tree Lighting is on December 2<sup>nd</sup>.

The next monthly meeting of the Zoning Board of Appeals will be held on December 18, 2018 at 7:30 p.m. There being no further business, the meeting was adjourned at 11:00 p.m.

Respectfully submitted,

Denise Schirmer, Secretary  
Zoning Board of Appeals

cc: Town Board  
Town Clerk  
Planning and Engineering  
Planning Board